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REVIEW OF PRIORITY THEMES

Measures to combat the smuggling of illegal migrants

Report of the Secretary-General

CONTENTS

	Paragraphs	*Page*
INTRODUCTION	1-3	2
I. ACTION TAKEN WITHIN THE UNITED NATIONS SYSTEM	4-14	2
II. GOVERNMENT INITIATIVES CONCERNING CRIMINAL LAW AND OTHER ACTION BY THE CRIME PREVENTION AND CRIMINAL JUSTICE SYSTEM	15-39	4
III. ACTION REQUIRED OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE	40-46	7

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INTRODUCTION

1. The present report was prepared pursuant to Economic and Social Council resolution 1995/10 of 24 July 1995, concerning criminal justice action to combat the organized smuggling of illegal migrants across national boundaries, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its fourth session. In that resolution, the Council requested the Secretary-General to remind Member States that had not yet done so of the importance of responding to the notes verbales sent to all Member States on 10 February and 9 June 1994 concerning the criminal legislation that they had enacted and other measures that they had taken to combat the smuggling of illegal migrants, and to submit to the Commission at its fifth session an updated report thereon.

2. It is the third in a series of reports on the matter. The first report (A/49/350 and Add.1),* prepared by the Secretary-General in response to General Assembly resolution 48/102 of 20 December 1993 and submitted to the Assembly at its forty-ninth session, provided a comprehensive overview of the background and scope of the problem of alien-smuggling. It also presented information received from a number of Governments, as well as from concerned intergovernmental organizations and United Nations specialized agencies, regarding measures and initiatives taken and envisaged to combat the smuggling of aliens. The second report (E/CN.15/1995/3),** submitted to the Commission at its fourth session, provided additional information on measures to combat alien-smuggling.

3. The present third report traces developments in respect of criminal law and other measures taken by Governments to combat the smuggling of illegal migrants, drawing on additional information received by the Secretary-General from the following 11 Governments in response to his notes verbales dated 21 August 1995 and 23 November 1995: Belgium, El Salvador, Greece, Holy See, Italy, Lebanon, Portugal, Romania, Slovakia, Sudan and United Kingdom of Great Britain and Northern Ireland. It also reviews action recently taken on the matter by United Nations intergovernmental bodies and conferences.

I. ACTION TAKEN WITHIN THE UNITED NATIONS SYSTEM

4. In its resolution 1995/10, the Council condemned once again the practice of smuggling illegal migrants. The Council recognized that it continued to be a widespread international activity frequently involving highly organized international syndicates that trafficked in human cargo without regard to the dangerous and inhumane conditions to which they were subjected, and in flagrant violation of domestic laws and international standards. The Council expressed its concern that a significant number of States had not yet enacted criminal legislation to combat all aspects of the smuggling of illegal migrants.

5. At its fourth session,[1] the Commission noted that the smuggling of illegal migrants, affecting most, if not all States, had to be combated by concerted action, particularly in the light of the fact that individuals involved in smuggling illegal migrants tended to use organized criminal groups to carry out their plans. The bribery and corruption that was involved constituted a threat to the rule of law.

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*The report contained a survey of replies received from the following States, United Nations bodies and specialized agencies and other intergovernmental organizations: Antigua and Barbuda, Austria, Bahrain, Belarus, Bulgaria, Burkina Faso, Canada, China, Costa Rica, Czech Republic, Denmark, Finland, Hungary, Japan, Jordan, Luxembourg, Malta, Monaco, Norway, Panama, Sweden, Switzerland, Syrian Arab Republic, Turkey, Ukraine, United States of America; Office of the United Nations High Commissioner for Refugees (UNHCR), International Civil Aviation Organization, International Maritime Organization and International Organization for Migration (IOM). The addendum contained replies provided by Australia, Denmark, Madagascar, Mexico, Myanmar, Philippines, Saudi Arabia and the Centre for Human Rights of the United Nations Office at Geneva.

**The report provided information received from the following States and intergovernmental organizations: Barbados, Brunei Darussalam, Cuba, France, Germany, Malawi, Nepal, Oman, Spain, Syrian Arab Republic and IOM.

6. Interrelated issues are being approached and addressed by other policy-making bodies and from different programme perspectives within the United Nations system. These fall within the realm of human rights, the advancement of women, children's rights, refugee rights and migration and development.

7. The attention of the Commission is invited, in particular, to recent action taken on violence against women migrant workers.* Traffic in women and girls and violence against migrant workers, which constitute abusive acts adverse to the status, situation, empowerment and advancement of women, have been condemned by the international community as human rights violations.

8. Regarding violence against women migrant workers, the General Assembly, in its resolution 50/168 of 22 December 1995, expressed its determination to prevent and eliminate all forms of violence against women and girls, and encouraged States to punish and redress wrongs done to women and girls subjected to any form of violence. The Assembly requested the relevant bodies and programmes in the United Nations system, when addressing the issue of violence against women, to give particular attention to the issue of violence perpetrated against women migrant workers, and to submit reports thereon to the General Assembly.

9. Regarding traffic in women and girls, the General Assembly, in its resolution 50/167 of 22 December 1995, stressed the need to eliminate, all forms of sexual violence and sexual trafficking, which were violations of the human rights of women and girls. The Assembly welcomed initiatives taken by the Commission and the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,** held at Cairo from 29 April to 8 May 1995, towards criminalizing the clandestine traffic in illegal migrants. Moreover, it concurred with the conclusion in the Platform for Action adopted by the Fourth World Conference on Women, held at Beijing from 4 to 15 September 1995, that the effective suppression of trafficking in women and girls for the sex trade was a matter of pressing international concern (A/CONF.177/20, chap. I, resolution 1, annex II).

10. In its resolution 50/167, the Assembly requested the Commission to consider appropriate follow-up to the Ninth Congress on measures to address the problem of trafficking in women and children, and to submit a report thereon to the Secretary-General, through the usual channels, for inclusion in his report to the Assembly. In addition, the Secretary-General was requested to submit to the Assembly at its fifty-first session, under the item entitled "Advancement of women", a comprehensive report on the implementation of resolution 50/167, with due regard for possible measures to improve the reporting procedure.

11. Regarding violence against migrant workers, it should be recalled that the Commission on Human Rights, in its resolution 1995/20 of 24 February 1995, condemned such acts of violence directed against women; that the General Assembly, by its resolution 45/158 of 18 December 1990, adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, annexed to resolution 45/158; and that the Working Group on Contemporary Forms of Slavery developed a draft programme of action on the traffic in persons and the exploitation of the prostitution of others (E/CN.4/Sub.2/1995/28/Add.1).

12. The attention of the Commission is drawn to other relevant developments and initiatives on the matter of international migration and development, in particular the recommendations of the International Conference

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*See the reports of the Secretary-General on violence against women migrant workers (A/49/354 and A/50/378) and the report of the Secretary-General on traffic in women and girls (A/50/369). See also the Guidelines on Prevention and Response to Sexual Violence against Refugees and the Guidelines on the Protection of Refugee Women, prepared by UNHCR.

**The Ninth Congress, in its resolution 8 on elimination of violence against women, invited States to examine ways consistent with their domestic law and national legal systems of ensuring that the prosecution of illegal acts concerning traffic in human beings and exploitation of the prostitution of others, committed abroad by one of their own nationals, is not hindered by gaps in international law or cooperation and that those acts are effectively sanctioned (A/CONF.169/16/Rev.1, chap. I).

on Population and Development, held at Cairo from 5 to 13 September 1994 (A/CONF.171/13, chap. I, annex, pp. 70-78). The General Assembly, in its resolution 50/123 of 20 December 1995 on international migration and development, invited the Commission on Population and Development to consider the interrelationship between international migration and development.

13. Moreover, the Assembly, in its resolution 50/123 requested the Secretary-General to designate a focal point within the Department of Policy Coordination and Sustainable Development to prepare a report to be presented to the Assembly at its fifty-second session containing concrete proposals on ways and means to address the issue of international migration and development, including aspects related to objectives and modalities for the convening of a United Nations conference on international migration and development.* It further called upon all relevant organs, organizations and programmes of the United Nations system to address this issue, and to submit their views to the Secretary-General. It invited the Council, at its organizational session for 1997, to consider including "International migration and development" as a theme in the context of its agenda for 1997. International migration, which would necessarily include issues such as alien-smuggling, might also raise important issues relating to human settlements, which would be dealt with at the United Nations Conference on Human Settlements (Habitat II), to be held at Istanbul in June 1996. The question of adequate shelter for migrants will be on the agenda of the Conference.

14. Also worthy of mention in respect of initiatives relevant to migrant smuggling are the activities of IOM, which continued to gather information on global migration and migrant trafficking flows around the world, and which issues a series of regular reports on migration trends worldwide. In addition, the International Scientific and Professional Advisory Council (ISPAC), which is part of the United Nations crime prevention and criminal justice programme network, organized an ancillary meeting on migration and crime during the Ninth Congress, and will convene an International Conference on Migration and Crime: Global Problems and Responses, to be held at Courmayeur, Italy, in 1996.

II. GOVERNMENT INITIATIVES CONCERNING CRIMINAL LAW AND OTHER ACTION BY THE CRIME PREVENTION AND CRIMINAL JUSTICE SYSTEM

15. The 11 States that replied to the notes verbales of the Secretary-General reported mainly on the initiatives and measures taken by them in criminal law and law enforcement to combat the smuggling of illegal migrants.

16. In 1995, the Government of Belgium modified its legislation relating to the access and entry of migrants, and their stay and establishment of residence in the country. The legislation defined penalties for illegal migration involving non-nationals as well.

17. The Government of El Salvador took measures to reinforce all borders of the country so as to detect more effectively any clandestine activity linked to illegal trafficking in persons and illegal migration. It had created within the National Civil Police a specialized Border Division to prevent and combat such activities. It had further established stringent requirements at airports in relation to travel and travel documentation and the falsification thereof. Non-documented persons were considered to be illegal migrants; they were to be detained and then deported to their last country of legal entry. Under the penal code, those entering the country illegally were to be deported rather than prosecuted where there was insufficient evidence against them. Modification of some of the laws concerning assisting in illegal migration were being considered, so that those responsible for supporting or aiding this activity would be subject to the full penalties of criminal law.

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*See Council decision 1995/313 of 27 July 1995.

18. In Greece, the law on Entrance-Exit, Stay, Employment, Deportation of Foreign Nationals, Refugee Immigrant Recognition Procedure and Other Provisions, enacted in 1991, provided for penal and administrative penalties against smugglers of illegal migrants, in line with the European Union standards on the matter and with the regulations stipulated by the Schengen Agreement. In the light of trends and developments in alien-smuggling, appropriate measures were being put into effect on the part of the Government, with emphasis on operational activity along land and sea borders, as well as within the country, so as to deter illegal border crossings and to break up smuggling networks. It was the intention of Greece not to proceed to the elaboration of further legal instruments at the present time, as it was of the view that the matter was being adequately addressed by existing national legislation.

19. The Holy See reported that the problem of the smuggling of illegal migrants was not of concern to the Government, as the Vatican City State was a small territory where strict entry controls were enforced.

20. Italy reported that it had been affected by immigration-related problems only recently. Until 1985, the only legal provisions concerning foreigners in Italy were contained in several articles of the consolidated text of Security Law, dating back to 1931. In 1986, the Parliament enacted a law designed to regulate the presence in Italy of immigrants. It addressed, however, only the employment aspect of the phenomenon, and in fact provided for a possible regularization of illegal immigration which had already taken place in Italy and had been absorbed by employment opportunities. The law was considered to be unsatisfactory, as only 12,000 illegal immigrants decided to leave the country.

21. In 1989, the Parliament of Italy issued a decree providing for urgent rules on political asylum, entry and residence of extra-European-Community and stateless immigrants already present in the territory. By that decree, a second chance of regularizing their status was offered to immigrants. But the new law did not prove successful either, and, upon expiration of the six-month time-limit accorded to regularize their position, only 230,000 extra-European-Community immigrants had applied for a regular status as legal residents. Five years after its entry into force, the law had proved to be inadequate, in particular with respect to the provisions for expulsion of illegal immigrants from the country and for the limitation of illegal entries. The number of illegal immigrants had increased considerably in recent years, especially those coming from States that, for different reasons, have been confronted with serious political, economic and social problems.

22. In order to address the situation more effectively, both the Government and the Parliament of Italy were undertaking a revision of the entire set of existing provisions regarding the entry and the residence of immigrants. In order to accelerate the implementation of the Schengen Agreement in Italy, the border police was applying more effective border controls by increasing the staff of the police force, as well as by introducing a computerized data system. Given the length of the Italian coastal border, such measures were deemed essential to reduce illegal landing attempts and to enhance the possibility of tracing those who entered the territory illegally.

23. The Government of Lebanon reported that in 1991, security authorities started taking strict measures to combat the counterfeiting of travel documents, and, by 1993, it appeared that such criminal activity had ceased. The measures taken to prevent the illegal emigration by nationals of Lebanon included not permitting citizens to depart the territory without legitimate visas to the countries of destination. To prevent an influx of illegal migrants into Lebanon, motorized units were vigilant at land and sea borders. Detained illegal migrants were taken to the General Directorate of Public Security, and contacts were made with the embassies of their countries of origin in order to initiate deportation procedures.

24. In Portugal, the Government had taken action to revise the system, procedures and penalties relating to entry into the country, to the exit and expulsion of non-nationals, and to the activities of persons who aided or arranged illegal migration. Aiding or facilitating illegal migration carried a maximum term of imprisonment of two years, or of three years if a profit motive is determined. A term of one to five years of imprisonment could be imposed for commission of the offence carried out or aided by a group, organization or association. All those associated with such organized illegal activity were subject to two to eight years of imprisonment.

25. Aside from the above-mentioned measures, the Border Patrol Service of Portugal continued to operate its Specialized Criminal Investigation Team, established in 1993 solely for the purpose of investigating this particular form of criminality. Preventive measures relating to border control remained the responsibility of personnel specialized in matters of detection of fraudulent documentation, and who were well equipped with the necessary technical aids. Within the framework of the European Community and the 1990 Convention Applying the Schengen Agreement, measures of information exchange and coordination of practices, policies and procedures were taking shape in Portugal.

26. The Government of Romania, during recent years, had been confronted with the complex manifestations of illegal international migration. It had adopted legislation to protect the country against violation of its borders and territorial integrity. In 1992, Parliament adopted legislation prohibiting illegal entry into or exit from the country, subject to a penalty of three months to two years of imprisonment. A term of imprisonment of six months to three years could be imposed on anyone who organized illegal passage across the border, and of up to five years in the case of such an act being committed by organized groups for profit and for those using arms in the commission of the offence.

27. Legislation adopted by the Senate of Romania to combat alien-smuggling stipulated, *inter alia*, that it was the responsibility of transport entities to ensure that proper documentation was presented for exit and entry. The Penal Code of Romania provided sanctions for the falsification of official documents and the utilization of such documents for purposes of passage.

28. Romania had concluded agreements with European countries to readmit nationals who had come into "irregular situations" in terms of immigration. Many cooperation agreements relevant to illegal migration and to traffic in persons had been concluded, and various exchanges of information between the Ministry of Interior of Romania and that of other countries had been successfully pursued. Of particular importance in that regard were the trans-border cooperation agreements concluded with the authorities of its neighbouring countries.

29. Since September 1995, the Ministry of the Interior and the Ministry of Foreign Affairs of Romania had attempted to put into operation a new methodology for the issuance of visas, requiring an invitation by the citizens of countries presenting a risk to Romania in terms of migration. Within the framework of international cooperation to combat illegal migration, Romania participated actively in different forums and conferences.

30. The Government of Slovakia noted an acute problem of illegal migration within Europe. Persons coming from countries with relatively weak economies and from those plagued by military conflict or warfare had, in increasing numbers, sought to enter countries of western Europe. Transit States, in particular those of central and eastern Europe, were facing enormous pressure, strain on their capabilities and security risks. Faced with growing restrictions on terms of entry and rigidity in immigration requirements, individuals seeking to migrate had resorted to illegal means, and smugglers, taking full advantage of the regional situation, had substantially increased their activities.

31. Slovakia had taken many measures in criminal law and law enforcement over the past few years, focusing especially on penal sanctions for the organized transnational criminal activities of smugglers and their accomplices. In October 1994, a law on organized transnational crime was enacted. The Government had committed itself, and become a party, to readmission treaties with border States and with Croatia, Romania and Slovenia. Despite the measures taken, however, the Government noted that it had been unsuccessful in curbing illegal migration in significant ways and in finding an effective solution.

32. Further, it was of the view that priority should be given to developing the necessary regional and cross-regional cooperation and exchange of information to combat organized trans-border criminality such as migrant smuggling. It was also of the view that priority attention should be given to studying migrant smuggling operations so as to take preventive measures and forestall acute illegal activity.

33. In the Sudan, a primary concern was the continuous flow of refugees from neighbouring countries because of civil war, famine and drought. It reported that national action to combat organized crime and the illegal movement of persons across international frontiers fell into three categories: (a) legislative measures, which included prohibition and provided for imposition of criminal penalties for involvement in such activities; (b) administrative measures, which included the establishment of agencies to deal with such activities, as well as the provision of appropriate training to enhance efficiency; and (c) technical measures, which included preventive and investigative action.

34. Border points had been established in the Sudan to prevent illegal entry and exit. More stringent immigration restrictions and closer monitoring of the entry and exit of non-nationals had also been undertaken.

35. The United Kingdom welcomed any measures designed to improve bilateral and multilateral cooperation to combat organized illegal immigration, and expressed its intention to pursue the objective of combating the trafficking of migrants.

36. In the United Kingdom, legislation had provided for the prosecution of those facilitating the illegal entry of persons by deception, subject, upon indictment, to a term of seven years of imprisonment. A national of the country might be prosecuted for the offence of "facilitation",* even in cases where relevant acts were committed in another country. An act of 1971 enabled the courts, in certain circumstances, to order the forfeiture of a ship, aircraft or vehicle used for the purpose of illegal entry into the country.

37. A successful countermeasure recently introduced in the United Kingdom was the use of sniffer dogs in searching freight vehicles. Another was the establishment by the Kent police, in 1994, of a Facilitation Support Unit to prosecute those assisting in illegal entry through South Coast Channel ports. In 1994, the Unit identified 177 persons involved in 109 incidents - more than double the number in 1993.** In addition, 447 cases of clandestine illegal entrance were detected in the Dover area. This figure represented an increase of 75 per cent over the previous year.

38. Under reciprocal arrangements with France, the United Kingdom posted an Immigration Officer in Paris. An officer of the *Police de l'air et des frontières* was based at the Immigration Service Headquarters in London. An Airline Liaison Officer was also posted at New Delhi to work with carriers and contribute to efforts to prevent the "carriage" of inadequately documented passengers. Consideration was also being given to the appointment of additional Airline Liaison Officers at other strategic locations around the world.

39. The United Kingdom was concerned about the use of forged documents and, in an effort to raise the level of awareness on the matter, provided forgery detection training to all immigration service staff, and had established a specialist forgery detection section. In that regard, the Government expressed its willingness to consider any requests for assistance from States, and to receive officials from other States for the purpose of training in matters of forgery detection.

III. ACTION REQUIRED OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE

40. The Secretary-General has presented to the Commission a series of reports containing the information and views provided by 53 Governments concerning criminal law and other measures adopted, as well as the information provided by five organizations on activities undertaken, to combat the smuggling of illegal migrants.*** The Commission might now wish to consider whether the information is sufficient, or

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*In 1992, thirty-four persons were convicted of this offence in the country.

**As compared with 20 persons in 1987.

***All documents in the series of reports have been made available to the Commission.

whether additional information on other aspects of migrant smuggling would be required for it to recommend further action.

41. Should the Commission be satisfied with the nature and amount of information presented thus far, and bearing in mind the legislative and policy pronouncements made by the General Assembly and the Council and its subsidiary bodies, it might wish to specify practical measures for an international course of action to guide States in combating an increasingly acute criminological phenomenon of transnational dimension. In that regard, the development and effective implementation of national, subregional, regional and interregional security plans might be considered.

42. Given the complexity of the issues involved and the substantial role played by transnational organized crime in global criminal activity, international cooperation, particularly in trans-border law enforcement, is crucial, and measures need to be specified and applied by all concerned. Moreover, a better common understanding of the problem to be tackled would need to be reached, and a precise, well-defined course of action pursued. To that end, and bearing in mind the increasing attention being paid and the growing importance being attached to the matter by States, more dialogue and joint action between source, transit and recipient States might be fostered, particularly across regions and in international forums, including consideration of the elaboration of a new international instrument.

43. In determining further action to be taken to combat migrant smuggling, the Commission might wish to consider integrated action involving other programmes and bodies within the United Nations system that deal with related issues, such as the Department of Policy Coordination and Sustainable Development, UNHCR, the United Nations Development Fund for Women, the Division for the Advancement of Women and the International Research and Training Institute for the Advancement of Women, as well as other functional commissions of the Council, in particular the Commission on Population and Development, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on the Status of Women.

44. In connection with migration and development, and, in response to General Assembly resolution 50/123, the Commission might wish to pronounce itself on ways and means of addressing the issue of international migration and development to be considered at a United Nations conference on migration and development to be held in 1997. In particular, the Commission might wish to invite the conference to include, as an integral part of its agenda, illegal migration and its many interrelated problems.

45. The important issue of the law of the sea might also be explored. Maritime control is of special importance, given the known volumes of illegal population movements that occur by sea. In fact, maritime and coastal border control are central to preventing and detecting a good deal of the illegal global trafficking.

46. Finally, the Commission might wish to pronounce itself on the problem of, and possible measures to combat, trafficking in women and children, for inclusion in the report of the Secretary-General to the General Assembly at its fifty-first session, as requested by the Assembly in its resolution 50/167.

Notes

[1]See *Official Records of the Economic and Social Council, 1995, Supplement No. 10* (E/1995/30), chap. III, paras. 71-73.